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IN THE

Supreme Court of the Un ted States

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October Term, 1969
No. 301

LOREN J. PIKE, as Supervisor of In ection, Arizona Fruit and Vegetable Standardization ervice,

Appellant,

vs.

BRUCE CHURCH, INC., a California cor oration,

Appellee.

On Appeal From the United States Dis ct Court for the District of Arizona.

[redacted]

Motion of Western Growers Assoc [redacted]. to File Brief as Amicus C tion for Leave and Brief of Western Growers As ciation as Amicus Curiae.

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LOREN J. PIKE, as Supervisor of Inspection, Arizona Fruit and Vegetable Standardization Service,
Appellant,

vs.

BRUCE CHURCH, INC., a California corporation,
Appellee.

On Appeal From the United States District Court for the District of Arizona.

JURISDICTIONAL STATEMENT.

Motion of Western Growers Association for Leave to File Brief as Amicus Curiae.

Western Growers Association respectfully moves this Court for leave to file the accompanying Brief in this case as *amicus curiae.* The consent of the attorney for the Appellant herein has been obtained, but the attorney for the Appellee herein refused to consent to the filing of a Brief by Western Growers Association as *amicus curiae.*

Western Growers Association is a trade association composed of growers and shippers of vegetables and melons in the States of California and Arizona. Its members produce 80% of the vegetables and melons

grown in these States and the value of their crops exceed one-half billion dollars annually. Together, California and Arizona produce 49% of the total volume of these commodities grown in the United States. More than 50% of their production is marketed East of the Mississippi.

The applicant has an interest in this case for the following reasons:

(1) Western Growers Association members in Arizona have a strong interest in the continued maintenance and enforcement of the Arizona Fruit and Vegetable Standardization Act and as an essential part thereof, A.R.S. Section 3—503c setting forth packing standards for cantaloupes grown in the State of Arizona.

(2) Western Growers Association members in California have their own California Standardization Act, containing standards for the quality of cantaloupes and standards for the containers and pack of cantaloupes grown in the State of California. As set forth in the accompanying Brief, if the standards for containers and packs are declared invalid or unenforceable, there remains no effective method for enforcing the standards for quality. Since in many ways the California and Arizona Standardization Acts are parallel, the decision from which this Appeal is taken puts the California Standardization Act, as well as the Arizona Standardization Act, in jeopardy.

The Brief of the Petitioner herein argues the need for review of the judgment of the Court below as to whether it improperly nullifies certain portions of the Arizona Fruit and Vegetable Standardization Act, but

it does not set forth the terms of the California Fruit, Nut and Vegetable Standardization Act or its legislative purpose, and does not argue the affect of the decision of the Court below on the continued enforcement of the California Act or whether these Acts are properly within the police power of the States.

Wherefore, Western Growers Association prays that the Court authorize the filing of the accompanying Amicus Curiae Brief.

HAIGHT, LYON & SMITH,

By GEORGE C. LYON,

Counsel for Western Growers Association.

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Appellee.

On Appeal From the United States District Court for the District of Arizona.

JURISDICTIONAL STATEMENT.

Brief of Western Growers Association as Amicus Curiae.

By leave of this Court, Western Growers Association files this Brief as *amicus curiae.*

Interest of Amicus Curiae.

Western Growers Association is a trade association composed of growers and shippers of vegetables and melons in the States of California and Arizona. Its members produce 80% of the vegetables and melons grown in the States of California and Arizona and the value of their crops exceed one-half billion dollars annually. Together, California and Arizona produce 49%

of the total volume of these commodities grown in the United States. More than 50% of their production is marketed East of the Mississippi.

Western Growers Association believes that a major factor in the ability of these two States to market successfully this large quantity of vegetables and melons in competition with other States of the Union is based upon the standardization laws which, for many years, have been an essential part of the framework of the laws of these States. Western Growers Association, and its members that it represents, have a strong interest in the continued maintenance and enforcement of these standardization laws.

Western Growers Association has a dual interest in this matter: To speak for its members in Arizona who feel the necessity that Arizona's standardization laws should be enforced, and to speak for its California members who require the continuing benefits resulting from the enforcement of its similar standardization law for fruits and vegetables. Western Growers Association is interested that neither the Arizona Standardization Act nor the Caliornia Standardization Act for fruits and vegetables be struck down.

This case involves particularly the enforcement of the standardization laws relating to cantaloupes. The States of California and Arizona produce and market cantaloupes from late Spring to late Fall. During the Summer, these cantaloupes are marketed in competition with cantaloupes from most of the States of the Union. It

has been possible to compete with the "home-grown" cantaloupes of other States, despite much larger shipping costs, because standardization of the product, over the years, has assured, and continues to assure, the buyer of a high quality product. The thrust of the opinion of the District Court in this case, if not reversed, is to invalidate the enforcement of these Standardization Acts.

Summary of Argument.

1. No part of the standardization law can be enforced unless the cantaloupes are packed in final form for shipment, in closed containers, before the cantaloupes leave the State.

2. The standardization law constitutes a valid exercise of the police power of the State.

ARGUMENT.

The present Fruit, Nut and Vegetable Standard
tion Act of California has been in effect in Califo
for over 37 years.

The legislative intent of the Act has been (1)
promote the development of the California Fruit,
and Vegetable industry in State, Interstate, and
eign markets, (2) to protect the State's reputation,
to establish standards and standard containers, and
to prevent deception in packing, marketing, and sal
fruits, nuts, and vegetables.

The California Act, which is closely paralleled
the Arizona Act, provides (a) for standards of qua
of the cantaloupes and (b) standards of containers
packs. These standards are set forth in the Appe
to this Brief.

The standards of quality provide that the cantalo
must be free from mold, decay, and insect injury
that they be mature. As the cantaloupes are picke
the field, many are picked which contain defects
are not mature. It is only as the cantaloupes
through a packing house and are carefully culled,
the shipper has a product which complies with t
requirements. If the cantaloupes are shipped out
the State loose and in bulk as they come from the f
the State not only loses its ability to enforce pac
standards, but also its ability to enforce quality st
ards.

The Fruit, Nut and Vegetable Standardization
constitute a valid exercise of the police power of
State. In *Pacific States Box & Basket Compan*
White, 296 U.S. 176, 80 L. Ed. 138, 56 S. Ct. 159,

ALR 853 (1935) Justice Brandeis, delivering the opinion of the Court, states:

> "The power of a State to prescribe standard containers in order to facilitate trading, to preserve the condition of the merchandise, to protect buyers from deception, or to prevent unfair competition is conceded. Such regulation of trade is a part of the inspection laws; was among the earliest exertions of the police power in America; has been persistent; and has been widely applied to merchandise commonly sold in containers. See *Turner vs. Maryland,* 107 U. S. 38, 51-54, 27 L. ed. 370, of the purchaser, would not be otherwise than a 375, 376, 2 S. Ct. 44. Latterly, with the broadening of the field of distribution and the growing use of containers in the retail trade, the scope of the regulation has been much extended."

The importance of the Florida Standardization Act, as it applies to citrus fruit, has long been recognized by this Court. We see a direct parallel between the facts and the law as it was applied to Florida citrus in the case of *Sligh v. Kirkwood,* 237 U.S. 52, 59 L. Ed. 835, 35 S. Ct. 501 (1915) and the facts and the proper applicable law in this case. In that case, the Court states:

> "We may take judicial notice of the fact that the raising of citrus fruits is one of the great industries of the State of Florida. It was competent for the legislature to find that it was essential for the success of that industry that its reputation be preserved in other States wherein such fruits find their most extensive market. The shipment of fruits so immature as to be unfit for consumption, and consequently injurious to the health of the purchaser, would not be otherwise than a serious injury to the local trade, and would certainly affect the successful conduct of such busi-

ness within the State. The protection of the State's reputation in foreign markets, with a consequent beneficial effect upon a great home industry, may have been within the legislative intent, and it certainly could not be said that this legislation has no reasonable relation to the accomplishment of that purpose."

The holding of the Court below that "A reading of the Act reveals no clear basis nor authority for issuance of the order by the defendant, Supervisor of Inspection of the Arizona Fruit and Vegetable Standardization Service" comes as a great surprise to the industry, particularly in light of the express language of the Act that cantaloupes must be packed in closed standard containers approved by the Supervisor.[1]

It is respectfully submitted that the issues in this case are substantial and that Appellant is entitled to an appellate review of the lower court's judgment. We urge that jurisdiction be noted.

HAIGHT, LYON & SMITH,
By GEORGE C. LYON,
Counsel for Western Growers Association, as Amicus Curiae.

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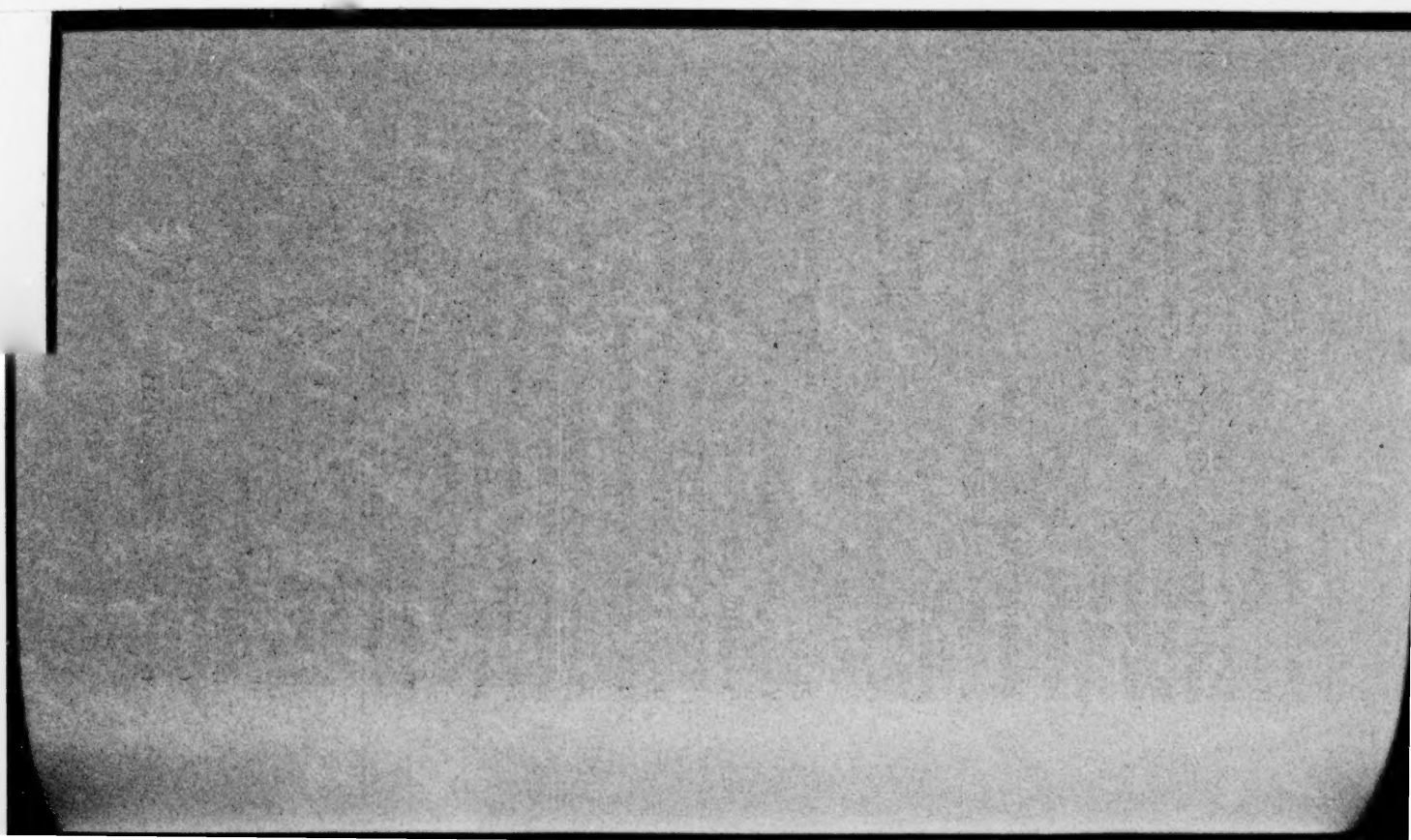
[1]A.R.S. Sect 3-503, C.:
". . . . all cantaloupes shall be packed in regular compact arrangement in closed standard containers approved by the Supervisor except as follows:

1. Cantaloupes to be used for charitable purposes or unemployment relief, or by the United States government or its agencies
2. Any retail sales directly to a consumer."



APPENDIX.

Section 45601 of the California Agricultural Code:

"Cantaloupes shall be mature but not overripe, not poorly netted, and free from any of the following defects:

(a) Mold, decay, and insect injury which has penetrated or damaged the edible portion of the cantaloupe.

(b) Serious damage which is due to bruises, sunburn, growth cracks, cuts, sponginess, flabbiness, wilting, or other causes. Damage to any one cantaloupe is not serious unless it affects the edible portion of the individual cantaloupe."

Section 45602 of the California Agricultural Code:

" 'Mature' in the case of a cantaloupe means that the cantaloupe complies with all of the following requirements:

(a) The appearance of the outside indicates maturity.

(b) The arils which surround the seed during the development of the maturity have been absorbed.

(c) The juice of the edible portion contains not less than 8% soluble solids as determined by the standard hand refractometer."

Section 45663 of the California Agricultural Code:

"All cantaloupes shall be packed in regular compact arrangement in standard Container No. 39, 40, 41, 42, 43, 44, 44B, or 44D. All such containers shall be closed and, except as otherwise provided in Section 45664, the number of cantaloupes in each container shall be one of the 'standard pack counts' which is listed in Section 45633 for each such container."